F. M. S. REPORTS.

[CRIMINAL REVISIONARY JURISDICTION]

CUSSEN, J.

February 2, 1938.

PUBLIC PROSECUTOR v. TAN YOOK KEE.

(KUALA LUMPUR CRIMINAL CASE No. 3287 of 1937)

PUBLIC PROSECUTOR v. KUPUSAMY.

(KUALA LUMPUR CRIMINAL CASE No. 3463 of 1937)

Criminal Procedure Code (Chapter 6) s. 278; s. 283—Sentence of imprisonment in default of payment of fines. Magistrate, after imprisonment has begun, ordering release from imprisonment and payment of fine by instalment—Legality.

The Superintendent of Prisons, Kuala Lumpur, submitted two Warrants of Commitment Nos. 187534 and 187536 in which the Magistrate, Kuala Lumpur, directed sentences of imprisonment in default of payment of fines.

Subsequently to the prisoners being confined in Kuala Lumpur Prison under these warrants the Magistrate, under Section 30 of the Prisons Enactment, directed the production of the prisoners before him and released the prisoners from custody on the execution of a "bond to pay the fines by instalment," in one case and "pending realisation of the fine" in the other case.

Upon revision (on reference by Superintendent of Prisons):—

Held, that there was nothing illegal in what the Magistrate had done.

REVISION.

M. C. Hay, Deputy Legal Adviser, as *amicus curiae*.

Cussen, J.—I do not think there is anything illegal in what has been done. It does not, in my opinion, contravene the provisions of section 278 Criminal Procedure Code—the judgment therein referred to consists of the conviction and sentence. The sentence is that provided by the substantive section of the Penal Law; in the present instances it is a fine that has been imposed. It would be against section 278 Criminal Procedure Code if the Magistrate had altered the fine, for the fine is the sentence and so part of the judgment.

The provisions of section 283 (i) (b) are not part of the sentence but alternative methods of enforcing the sentence as is evident from the words used *i.e.* "the Court passing the sentence may . . . ."

I agree with the Deputy Legal Adviser that the Magistrate, who imposes the sentence of fine, is not "functus officio" there and then, and can exercise any of the powers given by section 283 (i) (f) at any appropriate time until the fine is paid or levied.

I think that it is in the interests largely of the persons sentenced that this should be so; as the provisions of that section (283 (i) (b)) are obviously framed to enable the Court to give any consideration to what is in the best interests of the person sentenced *e.g.* the first proviso to section 283 (i) (b) (4).

Magistrate's action upheld.

[ORIGINAL CRIMINAL JURISDICTION]

HOWES, J.

March 8, 1938.

PUBLIC PROSECUTOR

v.

PAW SEI PUAN AND NINE OTHERS.

(NEGRI SEMBILAN CRIMINAL TRIAL No. 3 of 1938)

Criminal Procedure Code (Chapter 6) s. 166; s. 167 and s. 302—Plea of previous acquittal—Same facts—Acquittal on charge of murder—Subsequent trial on charge of rioting.

Ten accused persons were charged at Assizes with rioting, under section 147 of the Penal Code. Three of the accused had already been charged with murder, alleged to have been committed during the course of events out of which the charge of rioting arose, and had been separately tried on that charge and had been acquitted.

Held, that a plea of previous acquittal was not available to the three accused.

M. C. Hay, Deputy Legal Adviser, for Public Prosecutor.

Ernest Jeff for the accused.

Howes, J.—In this case, the ten Accused appear for trial on a charge of rioting under section 147 of the Penal Code, namely, that they on the 30th of October, 1937, at Chuah Village "were members of an unlawful assembly and in prosecution of the common object of such assembly namely using criminal force to Haji Jauhari and Haji Jelani committed the offence of rioting."

Before the Accused were charged, Mr. Jeff raised a preliminary objection to the inclusion of Accused Nos. 8, 9 and 10 in the charge, on the ground that they had already been charged with the murder of Haji Jelani in the course of the same transaction out of which the present charge of rioting arises, and had been acquitted.